

Notice of Allowability

Application No.

10/768,091

Examiner

Anne Marie Grunberg

Applicant(s)

PARSONS ET AL.

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to ____.
2. ☒ The allowed claim(s) is/are 1.
3. ☒ The drawings filed on 02 February 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date ____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

DETAILED ACTION

Drawings

The drawing has been accepted by an official draftsman.

Reasons for allowance

The present invention is distinguished from other mutations of 'Tifgreen' such as 'Floradwarf' by being rolled in the bud and by its winter coloration, at least.

Examiner's Amendment

1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

The following changes were authorized (and permission to make same by Examiner's amendment was granted) by Virginia Lehman in the course of a telephonic interview with Examiner Grünberg on September 27, 2004:

In the DRAWINGS, SPECIFICATION, CLAIM and ABSTRACT

The drawing label has been deleted. The following is a substitute specification, claim and abstract reflecting the name change of the new variety, the addition of page numbers and the addition of units, pollen information and other minor clarifications.

--APPLICATION FOR PLANT PATENT

INVENTORS: Don Parsons and Virginia Lehman

Art Unit: 1661

INVENTION: Bermudagrass Plant Named 'Premier'

SPECIFICATION

CROSS-REFERENCE TO RELATED APPLICATIONS

"Not Applicable"

STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR
DEVELOPMENT

"Not Applicable"

LATIN NAME OF THE GENUS AND SPECIES OF THE PLANT CLAIMED

The present invention relates to the genus and species *Cynodon dactylon* (L.) Pers.

VARIETY DENOMINATION

'Premier'

REFERENCE TO MICROFICHE APPENDIX

"Not Applicable"

Art Unit: 1661

BACKGROUND OF THE INVENTION

Field of Invention

The present invention relates to a new and distinct asexually reproduced variety of perennial bermudagrass *Cynodon dactylon* (L.) Pers.

BRIEF SUMMARY OF THE INVENTION

BACKGROUND OF THE INVENTION

This invention relates to a new and distinct perennial bermudagrass cultivar identified as 'Premier' bermudagrass (herein referred to as 'Premier'). The inventors, Donald Parsons and Virginia Lehman, discovered 'Premier' under cultivated conditions in a golf course fairway near Seal Beach, CA. 'Premier' was identified as a distinctly different vegetative patch or segregated clonal plant differing by darker green leaf color from the suspected parental variety common Tifgreen (unpatented). The inventors asexually reproduced 'Premier' by taking vegetative cuttings of the plant material from the golf course including stolons and rhizomes, cutting the rhizomes and stolons into segments,

Art Unit: 1661

each with a vegetative bud, and rooted them in potting media in a greenhouse near Parker, TX.

For purposes of registration under the "International Convention for the Protection of New Varieties of Plants" (generally known by its French acronym as the UPOV Convention) and noting Section 1612 of the Manual of Plant Examining Procedure, it is proposed that the title of the invention is Bermudagrass plant named 'Premier'.

Art Unit: 1661

BRIEF DESCRIPTIONS OF THE ILLUSTRATIONS

The drawing is of a tiller of 'Premier' bermudagrass.

Art Unit: 1661

COMPLETE DESCRIPTION OF THE VARIETY

'Premier' was characterized in greenhouse and field conditions. 'Premier' is a unique variety of bermudagrass (*Cynodon dactylon* (L.) Pers) that was discovered under cultivated conditions in a golf course fairway near Seal Beach, CA. 'Premier' was identified in the field as having a darker green leaf color than its suspected parent 'Tifgreen'. The golf course fairway was located in USDA Plant Hardiness Zone 9. 'Premier' was propagated by the inventors under field and greenhouse conditions in Parker, TX by cutting of rhizomes and stolons, rooting them in soil, and planting of the rooted material to provide planting stock for studying performance and for comparison of morphological characters after propagation. 'Premier' has been propagated by rhizomes, stolons, tillers, and sod. Asexually reproduced plants of 'Premier' have remained stable and true to type through successive generations of propagation. No seedling establishment from 'Premier' has been noticed in either greenhouse or field studies.

'Premier' is a perennial bermudagrass that spreads by both stolons and rhizomes. Characteristics of 'Premier' measured in 2003 were taken from plants that were approximately 9 months in age. The greenhouse was located near Lebanon, Ore., with a nighttime low temperature of 50 degrees F., and daytime high of 80 degrees F., and a minimum soil temperature of 60 degrees F. The plants were grown with a minimum 14-hour day length, supplemented with photosynthetically active radiation equivalent to

Art Unit: 1661

approximately 50% sunlight. The plants were fertilized with the equivalent of 1 pound of actual N per month, using a soluble fertilizer of 20-20-20 in two equal soluble applications per month.

'Premier' has a finer leaf texture than the suspected parent 'Tifgreen' (Table 1) when measured under greenhouse conditions in Lebanon, OR. 'Premier' has few surface leaf (1-5) hairs compared to the variety Tifgreen which has no leaf hairs. The hairs at the mouth of the sheath of 'Premier' are longer than 'Tifway' and 'Tifgreen' (Table 3). No seeds of 'Premier' have developed; no seedlings have been noted in the field studies. The inflorescences produced in the greenhouse have consisted of empty florets and no seed has been formed.

'Premier' has not shown any susceptibility in tests to date in the Aubrey, TX test production site to the diseases and insects common to the bermudagrass genus.

'Premier' has shown good turfgrass performance and temperature adaptation when tested in Dallas, TX (Table 4), and as far north as Aubrey, TX, USDA zone 8A, which would extend the area of adaptation for 'Premier' in a line from South-Central Alabama across central Arkansas through North Central Texas, across New Mexico and Arizona to Los Angeles in an East/West line and on a North/South line from North central Texas south through Mexico. 'Premier' will be limited only by winter survival in colder regions, and is undergoing further research to determine the most northern area of survival at this time. 'Premier' is similar to most medium to fine textured bermudagrasses in water

Art Unit: 1661

use demands as shown in production situations, and will be limited by adequate precipitation in drier to arid regions. 'Premier' is adapted from sandy to heavier loam soil textures and from slightly acid to slightly alkaline soil pH.

Art Unit: 1661

Table 1. Leaf blade widths and lengths and texture class of selected bermudagrass

cultivars, measured under greenhouse conditions in Lebanon, OR, 2003.

Variety	Width, 2nd youngest stolon leaf	Length, 2nd youngest stolon leaf	Length, 3rd panicle leaf	Width, 3rd panicle leaf	Leaf Texture Class
	--mm--	--cm--	--cm--	--mm--	
Premier	2.15	2.24	2.29	1.58	Medium
Tifgreen	2.77	2.79	2.01	2.11	Medium
Tifway	2.37	3.01	2.22	1.77	Medium

Art Unit: 1661

Table 2. Inflorescence and leaf characters of selected bermudagrass cultivars, measured under greenhouse conditions in Lebanon, OR, 2003.

Variety	Number	Flag leaf	Flag leaf	Leaf	Leaf Sheath
	panicle	width	length	Flag	Length, 4 th
	branches			Leaf	Youngest
	--cm--	--mm--	--cm--	--mm--	Vegetative
					Leaf
'Premier'	3.50	0.89	0.61	2.9	1.9
'Tifgreen'	3.38	1.26	0.84	3.1	1.8
'Tifway'	3.00	0.91	0.65	3.3	2.4

Art Unit: 1661

Table 3. Sheath hair length and stolon internode length measurements of selected bermudagrass cultivars, measured under greenhouse conditions in Lebanon, OR, 2003

Variety	Hair length, mouth of sheath --mm--	Stolon Internode length, node 2-3 --cm--	Stolon Internode length, node 3-4 --cm--
'Premier'	2.35	4.63	5.19
'Tifgreen'	2.06	3.77	3.60
'Tifway'	2.12	5.73	5.33

Art Unit: 1661

Table 4. Turf quality characters, Dallas, TX, 2003.

Genetic	Spring	Leaf	Quality	Quality	Quality	Quality	Mean	Spring	Summer	Fall	Dec.	
Color	Greenup	texture	May	June	July	August	Quality	Density	Density	Density	Color	Variety
7.33	5.67	7.67	6.33	6.33	7.00	7.00	5.47	5.00	8.00	7.67	2.67	Premier
7.67	5.00	8.00	5.67	5.67	7.00	6.33	5.17	5.00	7.67	8.00	5.00	Tifway
7.33	5.67	7.00	6.67	5.67	6.67	6.00	5.03	5.33	8.00	7.33	3.00	Celebration
7.00	5.00	6.33	6.00	5.67	6.00	5.67	5.19	5.33	7.67	7.33	3.33	Tift No. 1
6.67	4.00	6.00	4.00	4.67	5.00	5.00	4.14	3.67	7.00	7.00	2.00	Az. Common
6.67	3.33	6.00	5.00	5.00	5.00	5.33	4.53	4.67	7.00	7.00	1.33	NM Sahara
7.00	6.00	7.33	6.33	6.33	6.67	7.00	5.36	6.00	7.67	8.00	3.67	Midlawn
7.67	5.33	7.67	6.00	6.33	7.00	7.00	5.08	4.00	8.00	7.67	5.00	Tifsport
7.67	5.67	6.33	6.00	5.33	6.33	6.33	4.64	4.33	7.67	7.33	3.00	MS-Choice
0.75	1.00	0.70	1.30	0.77	0.66	0.71		1.79	0.53	1.21	1.00	LSD

Art Unit: 1661

COMPLETE BOTANICAL DESCRIPTION OF THE VARIETY

Origin: 'Premier' is a cultivar of a single clone of bermudagrass discovered under cultivated conditions in a Seal Beach, CA golf course fairway of 'Tifgreen' bermudagrass.

Classification: *Cynodon dactylon* (L.) Pers

Growth habit: 'Premier' is a perennial plant that spreads by stolons and rhizomes and produces a dense, fine textured turfgrass. The inflorescence of 'Premier' is a panicle, with branches originating from a common center.

Leaf Blade: rolled in the bud, slightly concave surface versus Tifgreen and Tifway, both of which have flat leaves.

Leaf blade pubescence: Adaxial leaf surface has very few, short (1-5) hairs versus Tifway with many hairs on adaxial surface; hairs mostly absent on abaxial leaf surface

Leaf sheath pubescence: present with very short hairs versus Tifgreen with no pubescence.

Leaf blade margin: rough versus Tifgreen with slightly rough margin

Leaf blade veins: obscure

Leaf ligule hairs: present, very short

Leaf blade flexibility (softness): stiff versus Tifgreen: soft; Tifway: medium stiffness

Vegetative leaf, fourth youngest vegetative leaf:

Blade length mean: 2.46 cm

Art Unit: 1661

Blade width mean: 2.15 mm

Sheath length mean: 1.9 cm

Stolon internode length, node 2-3: 4.63 cm

Stolon internode length, node 3-4: 5.19 cm

Stolon internode width, node 2-3: 0.89 x 1.02 mm

Stolon internode width, node 3-4: 0.99 x 1.07 mm

Inflorescence characters:

Length of flowering stem from lower node to panicle center: 7.74 cm; Tifgreen: 14.14 cm

Internode length from flag leaf to 2nd internode below flag: 4.73 cm

Culm width, stem thickness, base of floral area: 0.47 mm; Tifway: 0.54 mm

Node thickness, node below flag leaf: 0.65 mm

Mature plant height, including inflorescence: 10.8 cm; Tifgreen: 15.23 cm

Color Notations, vegetative characters, based on The R.H.S. Colour Chart (light quality, photoperiod, and general growth of the plants affect color notations):

Leaf Blade Color Adaxial leaf surface: 137B green

Stolon Color: 59A red purple and 145B yellow green

Color Notations, floral characters, based on The R.H.S. Colour Chart (light quality, photoperiod, and general growth of the plants affect color notations):

Stigma color: 61A red-purple

Anther color: 5C yellow – No pollen production has been noted.

Turf quality (rated 1-9, 9 best): 8; 'Tifgreen': 7

Turf color (rated 1-9, 9 best): 7; 'Tifgreen': 6;

Art Unit: 1661

CLAIM

I claim:

1. A new and distinct variety of bermudagrass plant, substantially as described and illustrated herein with the unique combination of morphological characters.

Art Unit: 1661

ABSTRACT


An asexually reproduced variety of perennial bermudagrass with a unique combination of characters including fine blade width and medium internode length. --

Art Unit: 1661

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie Grünberg whose telephone number is (571) 272-0975. The examiner can normally be reached from Monday through Thursday from 7:30 until 5:00, and every other Friday from 7:30 until 4:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811. The fax number for the unit is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.


ANNE MARIE GRÜNBERG
PRIMARY EXAMINER